



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-21366-2024

Reserved on : 24.10.2024

Pronounced on : 29.10.2024

Gurmit Singh Bakshi

.....Petitioner

Versus

Punjab Water Resources Management & Development
Corporation Limited

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Roopak Bansal, Advocate for the petitioner.

NAMIT KUMAR, J.

1. The petitioner has invoked the writ jurisdiction of this Court by filing the present petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 19.06.2024 (Annexure P-10), whereby the claim of the petitioner for grant of arrears of pay on re-fixation of seniority of the petitioner has been rejected. Further seeking a writ of mandamus, directing the respondents to pay arrears of pay along with interest @ 12% per annum on re-fixation of pay upon grant of notional promotion of the petitioner as Assistant Revenue Clerk vide order dated 20.01.2020 (Annexure P-6) and order dated 17.11.2023 (Annexure P-8), whereby the pay of the petitioner has been re-fixed equivalent to the pay of the employees junior to him.

2. The brief facts, as have been pleaded in the petition, are that the petitioner joined the services of the respondent-Corporation as

Irrigation Booking Clerk (IBC) on 04.10.1980 and has retired from the

**CWP-21366-2024****2**

post of Zileadar on 31.10.2017. During his service period, the petitioner had filed *CWP No.6041 of 1995 titled as 'Gurmit Singh Vs. PSTCL and others'* challenging the seniority lists dated 22.11.1983 & 09.12.1983 and order dated 03.12.1993, whereby the adhoc service rendered by the private respondents in the said case was taken into consideration while fixing their seniority. The said writ petition was disposed of by this Court vide order dated 04.09.2018 with the following directions :-

"In view of the above, without reflecting upon the merits of the case, respondent No.1 is directed to examine the case of the petitioner in the light of the law laid down in Darshana Sharma and others' case (supra) and in case, on examination, he reaches to the satisfaction that the case of the petitioner is covered by Darshana Sharma and others' case (supra), the consequential relief be given to her within 8 weeks thereafter. However, in case, on consideration, the competent authority reaches to the satisfaction that the case of the petitioner is not covered under the aforesaid authority, in that eventuality, a detailed order be passed."

Thereafter, the petitioner filed contempt petition bearing *COCP No.1005 of 2019 titled as 'Gurmit Singh Vs. Ashish Midha, Managing Director'* seeking compliance of order dated 04.09.2018 and during the pendency of the said contempt petition, the respondent passed order dated 12.07.2019, whereby order dated 03.12.1993, which was passed in favour of the private respondents in the said case was rescinded and it was ordered that the seniority list may be recasted after ignoring their adhoc service as Irrigation Booking Clerks. In pursuance to the said order dated 12.07.2019, the contempt petition filed by the petitioner was

**CWP-21366-2024****3**

disposed of vide order dated 19.07.2019. The relevant part of order dated 19.07.2019 reads as under :-

“xx xx xx xx xx

Learned counsel for the respondent has placed on record order dated 12.07.2019, whereby, the claim of the petitioner has been accepted. The same is taken on record. Copy thereof, has been supplied to the counsel for the petitioner.

Learned counsel for the respondent states that consequential benefits including any monetary benefit arising therefrom would be paid to the petitioner within 12 weeks from today.

In view of above, learned counsel for the petitioner submits that no cause of action survives in the present contempt petition, however, he seeks liberty to revive the present petition, in case something survives.

Disposed of as infructuous, with afore-said liberty.

Rule issued against the respondent stands discharged.”

Consequently, the final seniority list of Irrigation Booking Clerks (Patwari) was circulated vide order dated 14.10.2019 (Annexure P-4). Thereafter, vide order dated 23.10.2019, the petitioner was promoted as Assistant Revenue Clerk w.e.f. 18.06.1984 and Zileadar w.e.f. 01.10.2010, on notional basis and his pay was also fixed notionally at par with his junior vide order dated 20.01.2020. For claiming the arrears of pay of the promoted post(s) as Assistant Revenue Clerk and Zileadar, the petitioner has filed CM No.5519-CII-2021 in COCP No.1005 of 2019, however, the said application was withdrawn with liberty to avail alternative remedy in accordance with law vide order dated 07.02.2023.

**CWP-21366-2024****4**

Thereafter, the petitioner submitted representation seeking promotion at par with his junior namely Sh. Baldev Raj who also belongs to reserve category and his pay was fixed vide order dated 17.11.2023 (Annexure P-8) at par with Sh. Baldev Raj. Thereafter, the petitioner filed *CWP No.7110 of 2024 titled as Gurmit Singh Bakshi Vs. Punjab Water Resources Management & Development Corporation Limited* claiming arrears of pay on account of grant of notional promotion. The said writ petition was withdrawn by the petitioner vide order dated 01.04.2024 with liberty to approach the competent authority for redressal of his grievances raised in the petition with further direction that if any such representation is made by the petitioner within a period of 01 week, the same shall be considered by the competent authority within a period of 03 months thereafter. In pursuance to the said order, speaking order dated 19.06.2024 (Annexure P-10), has been passed by the respondent, whereby the claim of the petitioner for grant of arrears of salary on account of grant of notional promotion(s) has been rejected on the ground that the petitioner retired from the services of the Corporation on 31.10.2017 and he has neither worked nor performed the duties and function of the promotional post of Zileadar, therefore, he is not entitled for arrears of pay. Aggrieved against the said order, the petitioner has filed the instant petition.

3. Learned counsel for the petitioner submits that since the petitioner has been granted promotion as Assistant Revenue Clerk w.e.f. 18.06.1984 and as Zileadar w.e.f. 01.10.2010, therefore, he cannot be denied the arrears of pay of the said post(s). He has placed reliance upon



CWP-21366-2024

5

the judgments of this Court in ***Kanwaljeet Singh Vs. State of Haryana and others : 2008(4) S.C.T. 326*** and ***Gian Singh Vs. State of Punjab and others : 2010 (4) S.C.T. 726***.

4. I have heard learned counsel for the petitioner and perused the relevant record with his able assistance.

5. The factual position is not in dispute so far as the joining of the petitioner as Irrigation Booking Clerk on 04.10.1980 and his retirement on 31.10.2017. However, in the petition it has been stated by the petitioner that he retired as Zildar and whereas, in the impugned order dated 19.06.2024, it has been stated that he has retired as Assistant Revenue Clerk. It is also not in dispute that earlier the petitioner has filed CWP No.6041 of 1995 impugning the seniority lists dated 22.11.1983 & 09.12.1983 and order dated 03.12.1993 with further prayer for direction to the respondents to recast seniority list as per bye-laws from the date of regular appointment instead of deemed date of regularization. In the said writ petition, the petitioner had challenged the seniority assigned to the private respondents, whereby their adhoc service was counted while recasting the seniority. The said writ petition was disposed of by this Court vide order dated 04.09.2018 in terms of the judgment passed in ***CWP No.1267 of 1999 titled as 'Darshana Sharma and others Vs. Punjab State Tubewell Corporation and others'*** decided on 26.09.2013 which was disposed of by this Court by issuing the following directions :-

“xx xx xx xx xx

It is not in dispute that all the respondents were



appointed on the recommendations of the Committee directly without throwing the issue of appointment to public. The Committee does not enjoy a statutory status and therefore, by no stretch of imagination can it be said that the appointment by them directly without inviting applications would be in accordance with the rules or in accordance with the mode of public appointment. Clearly, all these appointments can be termed to be contrary to the rules.

A Full Bench of this Court in Chambel Singh v. State of Haryana and another 1995(1) R.S.J. 382 has held that the adhoc service per-se cannot be counted to determine an appointee's seniority in the cadre.

The Hon'ble Supreme Court in Anuradha Mukherjee (Smt.) and others v. Union of India and others (1996) 9 S.C.C. 59 has held that only that adhoc service can be construed towards reckoning seniority where the appointment made is in accordance with rules and by the mode of public appointment. Otherwise, this would result in giving undue benefit to persons who have entered service through back door. To a similar effect is the Division Bench judgment of this Court in State of Haryana and another v. Om Parkash Nagra and others 2012(2) S.C.T. 76. Similar is another judgment of the Hon'ble Supreme Court in State of Punjab and another v. Ashwani Kumar and others 2008(4) S.C.T. 269.

For the aforesaid reasons, there is no doubt that the issue raised in the instant petition is no longer res integra and this petition has necessarily to be accepted. But before parting with the order, this Court is constrained to observe that in fact, the Corporation itself has taken a decision which has been placed on record in C.M. No.5611 of 2006 indicating that the Corporation has rectified the situation,

**CWP-21366-2024****7**

but for the reasons best known to them, such a decision has not been given effect to.

The writ petition is disposed of with a direction to the Corporation to formulate the seniority of employees afresh keeping in view the above observations made by this Court as also keeping in view their own decision which they have taken, but not cared to implement. Keeping in view the fact that sufficient time has elapsed, the exercise be conducted expeditiously, preferably within a period of six months from the date of receipt of a certified copy of this order. If any consequential benefit is to be paid to the petitioners, the same be paid within two months thereafter.”

The LPA filed against above-said judgment passed in CWP No.1267 of 1999 has also been dismissed.

6. Thereafter, vide order dated 12.07.2019, the order dated 03.12.1993, whereby benefit of adhoc service was granted to the private respondents in the said case was rescinded and it was further directed that the seniority list may be recasted after ignoring their adhoc service of Irrigation Booking Clerks. Consequently, final seniority list of Irrigation Booking Clerks (Patwari) was issued on 14.10.2019. In the meanwhile, the petitioner has retired from service on attaining the age of superannuation on 31.10.2017 and after his retirement, he has been granted promotion as Assistant Revenue Clerks w.e.f. 18.06.1984 and as Zildar w.e.f. 01.10.2010 on notional basis, vide order dated 23.10.2019 and his pay has also been fixed notionally at par with his junior.

7. Once the seniority of the post of Assistant Revenue Clerk



CWP-21366-2024

8

remained under dispute before this Court and the earlier writ petition filed by the petitioner was disposed of on 04.09.2018 i.e. after the retirement of the petitioner and final seniority list was circulated on 14.10.2019 and in consequence thereof, the petitioner has been granted promotion as Assistant Revenue Clerk and Zileadar on notional basis, the petitioner cannot be granted arrears of pay and allowances. The above view is supported by the judgment passed in ***State of Haryana Vs. O.P. Gupta etc. : 1996 (2) S.C.T. 294*** vide which the Hon'ble Supreme Court while relying upon its judgments in ***Paluru Ramakrishnaiah Vs. Union of India : (1989) 2 SCR 92***; ***Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha : (1990) 3 SCC 472*** and ***Union of India Vs. K.V. Jankiraman : 1991 (3) SCT 317*** has held that where the inter-se seniority dispute of the employees was sub-judice before the Court and after finalization of the said dispute, the seniority has been finalized and promotions have been made, the employees cannot be granted the arrears of salary. In the said case, the employees approached this Court for claiming the arrears of pay on account of grant of deemed date of promotion. Their claim was accepted by this Court, however, the same was reversed by the Hon'ble Supreme Court. The relevant portion of the said judgment reads as under :-

“6. Having regard to the above contentions, the question arises: whether the respondents are entitled to the arrears of salary? It is seen that their entitlement to work arises only when they are promoted in accordance with the Rules. Preparation of the seniority list under Rule 9 is a condition



precedent for consideration and then to pass an order of promotion and posting to follow. Until that exercise is done, the respondents cannot be posted in the promotional posts. Therefore, their contention that though they were willing to work, they were not given the work after posting them in promotional posts has no legal foundation. The rival parties had agitated their right to seniority. Ultimately, this Court had directed the appellant to prepare the seniority list strictly in accordance with Rule 9 untrammelled by any other inconsistent observation of the Court or the instructions issued in contravention thereof. Since the order had become final in 1990, when the appeal had been disposed of by the Court by the above directions, the State in compliance thereof prepared the seniority list in accordance with the Rules and those directions and promotions were given to all eligible persons and postings were made accordingly on December 1, 1992. In the interregnum some had retired. As stated earlier, though the deemed date has been given as 1.1.1983, the respondents cannot legitimately claim to have worked in those posts for claiming arrears and, as a fact, they did not work even on ad hoc basis.

7. This Court in **Paluru Ramakrishnaiah and others vs. Union of India and another, (1989) 2 SCR 92**, considered the direction issued by the High Court and upheld that there has to be "no pay for no work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not



*entitled to the payment of arrears of the salary. The same ratio was reiterated in **Virender Kumar vs. Avinash Chandra Chadha, (1990) 3 SCC 472** in paragraph 16.*

8. *It is true, as pointed out by Sri Hooda, that in **Union of India vs. K.V. Jankiraman, 1991(3) SCT 317 (SC) : AIR 1991 Supreme Court 2010**, this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of him, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto.*

9. *In these appeals unless the seniority list is prepared and finalised and promotions are made in accordance with the Rules on the basis of the above seniority list, the question of entitlement to work in the promotional posts does not arise. Consequently, the payment of arrears of salary does not arise since, admittedly the respondents had not worked during that period. The High Court was, therefore, wholly illegal in directing payment of arrears of salary. The order of the High Court accordingly is quashed.*

10. *The appeals are accordingly allowed.”*

8. To the similar effect is the judgment of Hon’ble Supreme Court in **Union of India Vs. B.M. Jha : 2007(11) SCC 632** decided on 24.10.2007.



CWP-21366-2024

11

9. In the present case, the recasted seniority list was circulated on 14.10.2019 by the respondent in pursuance to the directions issued by this Court on 04.09.2018 in CWP No.6041 of 1995 i.e. after the retirement of the petitioner and thereafter, the petitioner has rightly been granted the promotion as Assistant Revenue Clerk w.e.f. 18.06.1984 and as Zileadar w.e.f. 01.10.2010 on notional basis. Since the petitioner has not performed the duties on the promotional post(s), therefore, he is not entitled for the grant of arrears of salary.

10. The judgments cited by learned counsel for the petitioner are clearly distinguishable and not applicable to the facts of the present case.

11. Consequently, the present petition, being devoid of merit, is hereby dismissed with no order as to costs.

29.10.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No